LIM CHOR PEE, RE

HIGH COURT, SINGAPORE
GOH JOON SENG J
[ORIGINATING SUMMONS NO. 452 OF 1988]
3 JULY 1991

***LEGAL PROFESSION**: Bill of costs - Order by Senior Assistant Registrar to stamp bill of cost before taxation - Power of Senior Assistant Registrar to do so - To penalize a party for drawing up an excessive bill - Stamp fees are payable ad valorem - Rules of the Supreme Court [Sing], O. 59, r. 28(1), (3), O. 90, Appendix B, Item 80 - Legal Profession Act [Sing], s. 80.*

The respondent is an advocate and solicitor of the Supreme Court of Singapore. As a result of certain charges brought against R, the Disciplinary Committee of the Law Society determined that there existed cause of sufficient gravity for disciplinary action against the respondent under the Legal Profession Act (the Act).

The respondent was asked to show cause why he should not be dealt with under s. 80 of the Act. The High Court found, at the conclusion of the show cause proceedings that none of the 6 charges had been proved beyond a reasonable doubt. The order *nisi* to show cause was discharged and the order of the Disciplinary Committee for payment of costs against the respondent was set aside. The Society was ordered to pay the costs of the respondent in respect of the hearing in the High Court.

The respondent on presenting his bill of costs for taxation, was ordered by the Senior Assistant Registrar (SAR) to stamp the bill of costs before taxation for the full amount of $180,444.18 less agreed deduction of $594.28. The SAR made the order on the ground that the bill of costs was excessive and was of the view that some of the items claimed as disbursements would not be allowed in principle or at least should be severely reduced in quantum.

This was the respondent's appeal against the SAR's order.

Held:

[1] Under Item 80 of Appendix B of the Rules of the Supreme Court 1970, the bill of costs is to be stamped before the taxation so as to penalise a party or a solicitor for drawing up a bill of costs which is either too excessive or contains items which should not in principle have been included, as the excess of the amount will have to be borne by the party who presented the bill or by his solicitor by operation of O. 59 r. 28(1) & (3) of the Rules of the Supreme Court.

[2] By virtue of O. 91 read with Item 80 of Appendix B, the stamp fees payable on taxing a bill of costs is '*ad valorem*' on the amount at which the bill of costs is ultimately allowed and certified by the Registrar under O. 59 r. 32. Any excess of stamp fees paid for the full amount of the bill of costs before taxation is therefore refundable.

[3] The proviso under which the Taxing Officer in England and the Registrar in Singapore 'may in any case require the bill of costs to be stamped before taxation ...' is wide enough to empower the Senior Assistant Registrar to make the order appealed against when he was of the view that the bill was too excessive bearing in mind the getting up item drawn at $150,000 when in the society's previous bill of costs presented for taxation pursuant to the order of the Disciplinary Committee the getting up allowed was only $44,000.

[Respondent's appeal dismissed.]

Case referred to:
Moscow Narodney Bank Ltd. v. Amos W Dawes [1978] 2 MLJ xliii ***(cons)***

Legislation referred to:
Legal Profession Act (Cap. 161) [Sing], ss. 80, 87(1)
Rules of the Supreme Court 1970 [Sing], O. 59 rr. 28(1), (3), 3, 27(2), 32, O. 91
Supreme Court Fees Order 1980 [UK], s. 5

For the advocate & solicitor - Kelvin Chia
For the law society - Lim Teng Leong

JUDGMENT

Goh Joon Seng J:

The abovenamed Lim Chor Pee is an Advocate & Solicitor of the Supreme Court of Singapore. He was the respondent in the proceedings (the respondent) to show cause why he should not be dealt with under s. 80 of the Legal Profession Act [Cap. 161] (the Act). The proceedings arose from a determination by the Disciplinary Committee (D.C.) appointed by the Chief Justice under s. 87(1) of the Act that on the six charges framed by the Law Society of Singapore (the Society) on information referred to the Society by the Attorney-General there existed cause of sufficient gravity for disciplinary action under s. 80 of the Act.

At the conclusion of the show cause proceedings, the High Court found that none of the six charges against the respondent had been proved beyond a reasonable doubt. Accordingly, the order *nisi* to show cause was discharged and the order of the D.C. for payment of costs against the respondent set aside. The Society was ordered to pay the costs of the respondent in respect of the hearing in the High Court.

Pursuant to the said order for costs, the respondent presented his bill of costs for taxation. When the bill of costs came up for taxation on 23 August 1990, the Senior Assistant Registrar on the application of Counsel for the Society made an order that the respondent stamp the bill of costs before taxation for the full amount thereof being $180,444.18 less agreed deduction of $594.28. The Senior Assistant Registrar made the order under the proviso to Item 80 of Appendix B of the Rules of the Supreme Court 1970 on the ground that the bill of costs was too excessive "especially the sum of $150,000 claimed for getting up". The Registrar was also of the view that "some of the items claimed as disbursements would not be allowed in principle or at the least severely reduced in quantum".

The respondent, being dissatisfied with the said order, appealed against the same. This appeal came before me. I dismissed the appeal. I now give my grounds for doing so.

Item 80 of Appendix B provides that on taxing a bill of costs:

(a) where the amount allowed does not exceed $50 the stamp fee payable is $8; and

(b) where the amount allowed exceeds $50 for every additional $50 allowed or fraction thereof the stamp fee payable is $3.

The proviso to item 80 reads:

> Provided that the Registrar may in any case require the bill of costs to be stamped before taxation with the whole or part of the amount of fees which would be payable if the bill was allowed by him at the full amount thereof.

In so ordering, the Senior Assistant Registrar relied on the case of *Moscow Narodney Bank Ltd. v. Amos W Dawes* [1978] 2 MLJ xliii in which the Deputy Registrar Mr. Roderick Martin invoked his powers under the same proviso to item 78 (now item 80) of Appendix B of the Rules of the Supreme Court and ordered the bill of costs to be stamped for the full amount thereof before taxation. In his grounds of decision Mr. Martin stated:

> It is usually after taxation that allocatur or stamp fees are to be paid upon what has been allowed (RSC 1970, O. 59 r. 32). An exception to this is the proviso to item 78 of Appendix B to the Rules of the Supreme Court which provides:
>
> Provided that the Registrar may in any case require the bill to be stamped before taxation with the whole or part of the amount of fees that would be payable if the bill was allowed by him at the full amount thereof.
>
> The *raison de'tre* of this proviso is obvious: *to penalise a party or his solicitor for drawing up a bill of costs which is either far too excessive and/or which contains items which should not on principle have been included, as the allocatur or stamp fees paid in excess of the amount eventually allowed on taxation will have to be borne by the party who presented the bill or by his solicitor by operation of O. 59 r. 28(1) and 3.* (Emphasis is mine).

Order 59 is an order on costs, and not on Court fees payable. For convenient reference I set out the provisions of O. 59 r. 28(1) and (3):

> 28(1). On the taxation of a solicitor's bill to his own client (except a bill with respect to non-contentious business) all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred.
>
> 28(3). For the purpose of para. (1), any costs which in the circumstances of the case are of an unusual nature and such that they would not be allowed on a taxation of costs in a case to which r. 27(2) applies, shall, unless the solicitor expressly informed his client before they were incurred that they might not be so allowed, be presumed, until the contrary is shown, to have been unreasonably incurred.

A perusal of O. 59 r. 28(1) and (3) quoted herein clearly shows that reference to the same being the rule by operation of which 'the allocatur or stamp fees paid in excess of the amount eventually allowed on taxation will have to be borne by the party who presented the bill or by his solicitor' is incorrect.

Court fees are prescribed in Appendix B and payable under O. 91. Order 91 reads:

> (1) The fees and percentages in Appendix B shall be taken and paid in all causes and matters in the Supreme Court:
>
> Provided that nothing herein shall affect any fees fixed by any written law not by these rules expressly or impliedly repealed.
>
> (2) The fees and percentages to be taken and paid under this order shall be collected in such manner as the Chief Justice may from time to time direct.

Thus by virtue of O. 91 read with item 80 of Appendix B, the stamp fees payable on taxing a bill of costs is *'ad valorem'* on the amount at which the bill of costs is ultimately allowed and certified by Registrar under O. 59 r. 32. Any excess of stamp fees paid for the full amount of the bill of costs before taxation is therefore refundable. Be that as it may, it is contended on behalf of the respondent that according to English practice only bills of costs by a solicitor to his own client have been ordered to be stamped before taxation. This is to prevent the solicitor from not discharging the taxing fee after taxation. There are no reported English decisions on the proviso to item 29(b) of s. 5 of the Supreme Court Fees Order 1980 which

is in *pari materia* with the proviso to item 80 of Appendix B of our Rules. The English proviso first appeared as a Note to s. IX part VI of the Supreme Court Fees Order 1930 on fees payable on taxation of costs. The note reads:

> The taxing master may in any case require the bill of costs to be stamped before taxation with the amount of fees which would be payable if the bills were allowed by him at the full amount thereof, including in cases under the Solicitors Act 1843 the fee payable in respect of the cash account.

It then became a proviso to Item 81 of the Supreme Court Fees Order 1961. Now it is the proviso to item 29(b), s. 5 of the Supreme Court Fees Order 1980. But from the affidavit of Frederic Thomas Horne, a taxing master for 21 years, the editor of Cordery's "Law Relating to Solicitors" and one of the editors with responsibility for the costs and legal aid sections of the 1988 White Book, it appears that in England the Supreme Court Taxing Office will not usually require a payment of the taxing fee to be taken before taxation unless it is a solicitor's bill to his own client which is to be taxed. Where costs are to be taxed, *inter parties,* the taxing fee is not usually required until the amount of the costs is finalised on taxation. The practice of the Supreme Court Taxing Office is only to require the bill of costs to be stamped in advance where the party presenting the bill for taxation has previously failed to comply with the Taxing Office's requirements or where there is a reason to believe that the party presenting the bill for taxation is likely to fail to discharge the taxing fee after taxation.

Since the rationale for ordering both solicitor and client and party and party bills of costs to be stamped before taxation is to safeguard revenue, it is contended on behalf of the respondent that he should not be required to stamp his bill of costs before taxation as there is no suggestion that he may not stamp the bill of costs after taxation.

The origin of the English proviso might well have been intended to safeguard revenue. But the proviso under which the taxing officer in England and the Registrar in Singapore 'may **in any case** require the bill of costs to be stamped before taxation ...' (emphasis is mine) is wide enough to empower the Senior Assistant Registrar to make the order appealed against when he was of the view that the bill was too excessive bearing in mind the getting up item drawn at $150,000 when in the Society's previous bill of costs presented for taxation pursuant to the order of the D.C. the getting up allowed was only $44,000.

Also found at [1991] 3 CLJ 1936